



Heather Gardens

METROPOLITAN DISTRICT

NOTICE OF HGMD BOARD OF DIRECTORS REGULAR MEETING

January 16, 2025, at 1:00 P.M.

Pursuant to Section 24-6-402(2)(c), C.R.S., the Board of Directors of the Heather Gardens Metropolitan District hereby gives notice that it will hold a regular meeting at the at the Heather Gardens Clubhouse in the boardroom and via Zoom video conference at **1:00 p.m.** on **January 16, 2025**. The meeting will be held for the purpose of conducting the business of the Heather Gardens Metropolitan District. This meeting is open to the public (the executive session will not be open to the public).

Join Zoom

<https://us06web.zoom.us/j/81601701147>

Meeting ID: 816 0170 1147

Pass code: Not Required

Or Dial-In: +1 346 248 7799

AGENDA

1. Pledge of Allegiance
2. Determine quorum present
3. Call meeting to order
4. Consider Approval of/Additions To/Deletions From the Agenda
5. President's Report
6. Treasurer's Report
7. District Manager's Report
8. Committee Chair Reports
 - a. Audit/Finance Report – No meeting – David Kennedy has been added to the Audit/Finance Committee.
 - b. Capital Program Committee – Oral Report
 - c. Clubhouse Committee Report – Oral Report
 - d. Foundation Committee Report – No meeting – Oral Report
 - e. Golf Committee Report – Oral Report
 - f. Restaurant Committee Report – Oral Report
 - g. RV Lot Committee Report – No meeting – Oral Report
9. Consultant/Advisor Reports
10. Review of Financial Reports
11. Unfinished Business
12. New Business
 - a. Consider Approval of Annual Administrative Resolution
 - i. Report on Status of Completion of Annual Compliance Items
 - b. Consider Approval of Election Resolution
 - i. Consider Approval of Election Services Agreement with Public Alliance, LLC

- c. Discuss Memorandum re HB 21-1110 and Rules Establishing Technology Accessibility Standards
 - i. Consider Approval of Resolution Adopting Technology Accessibility Statement
 - ii. Motion 2025-01-16-1 archive old/unnecessary information from HGMD Website
 - d. Auditor Motion 2025-01-16-3 Approve Engagement of Rubin Brown for 2023 Audit of Financial Statements Required by Local Government Audit Law
 - e. Consider Approval of Engagement of Auditor for 2024 Audit of Financial Statements Required by Local Government Audit Law
13. Public Comments on Non-Agenda Items (time limit of 5 minutes per speaker)
14. Announcements
15. Adjournment

The next HGMD regular Board meeting will be held on Thursday, February 20, 2025, at 1:00 PM.

2888 S. Heather Gardens Way • Aurora, CO 80014 • (303) 755-0652 (Office) • (303) 745-5253 (Fax)
www.hgmetrodist.org



Heather Gardens

METROPOLITAN DISTRICT

HEATHER GARDENS METROPOLITAN DISTRICT

BOARD ACTION

DATE: JANUARY 16, 2025

MOTION NUMBER: 2025-01-16-1

MOTION: ARCHIVE OLD/UNNECESSARY INFORMATION FROM HGMD WEBSITE

I move that the Heather Gardens Metropolitan District Board of Directors approve archiving old and/or unnecessary information from HGMD website

ECONOMIC COST TO THE DISTRICT: \$0
APPROPRIATED BY: N/A

Motion by: William Gold **Second by:** _____

Rationale: Much of the content of the HGMD Website is not fully accessible and part of the statutorily required material for certain special districts to post to websites. The cost to remediate materials posted on the website is approximately \$6 per page. As such, the remediation of all of the material currently on the website could result in a huge expense to the District. By archiving all old and/or unnecessary content, HGMD can focus on the remaining current and statutorily recommended content for compliance and accessibility.

Debate: _____

VOTE:

	Yes	No
William Gold		
Eloise Laubach		
Forrest McClure		
David Kennedy		
Steve Stratton		
Total		



Heather Gardens

METROPOLITAN DISTRICT

HEATHER GARDENS METROPOLITAN DISTRICT

BOARD ACTION

DATE: JANUARY 16, 2025

MOTION NUMBER: 2025-01-16-3

MOTION: APPROVE RUBIN BROWN TO DO THE 2023 HGMD AUDIT

I move that the Heather Gardens Metropolitan District (HGMD) Board of Directors approve having Approve Rubin Brown to do the 2023 HGMD statutory audit

ECONOMIC COST TO THE DISTRICT: \$36,000

APPROPRIATED BY: N/A

Motion by: William Gold **Second by:** _____

Rationale: HGMD is past the required deadline for the 2023 statutory audit. Based on advice from legal counsel and timing we should have Rubin Brown conduct the 2023 statutory audit as soon as possible.

Debate: _____

VOTE:

	Yes	No
William Gold		
Eloise Laubach		
Forrest McClure		
David Kennedy		
Steve Stratton		
Total		

**ANNUAL RESOLUTION OF
THE BOARD OF DIRECTORS OF THE
HEATHER GARDENS METROPOLITAN DISTRICT**

At a regular meeting of the Board of Directors of the Heather Gardens Metropolitan District, City of Aurora, Arapahoe County, Colorado , held at 1:00 P.M., on Thursday, January 16, 2025 at the Heather Gardens Clubhouse, 2888 South Heather Gardens Way, Aurora, Colorado 80014, and via videoconference at <https://us06web.zoom.us/j/81601701147> and via telephone conference at Dial In: +1 346 248 7799, Meeting ID: 816 0170 1147, Password Not Required, at which a quorum was present, the following resolution was adopted:

WHEREAS, the Heather Gardens Metropolitan District (the “District”) was organized as a special district pursuant to an Order of the District Court in and for the County of Arapahoe, Colorado, dated April 6, 1983, and is located within Arapahoe County (the “County”); and

WHEREAS, the Board of Directors of the District (collectively referred to as the “Board” or individually as “Director(s)”) has a duty to perform certain obligations in order to assure the efficient operation of the District; and

WHEREAS, Section 32-1-306, C.R.S. requires the District to file a current, accurate map of its boundaries with the County Assessor, County Clerk and Recorder and the Division of Local Government (the “Division”) on or before January 1 of each year; and

WHEREAS, Sections 24-10-109 and 24-32-116, C.R.S. require that the District provide its name, its principal address and/or mailing address, the name of its agent and the agent’s mailing address to the Department of Local Affairs (the “Department”) and keep such information updated regularly; and

WHEREAS, Section 32-1-809, C.R.S. requires that the Board provide notice, containing certain information about the District, to the eligible electors of the District no more than sixty (60) days prior to and not later than January 15; and

WHEREAS, Section 32-1-104(2), C.R.S. requires that the District, on or before January 15 of each year, file a copy of the notice required by Section 32-1-809, C.R.S. with the Board of County Commissioners, the County Assessor, the County Treasurer, the County Clerk and Recorder in each county in which the District is located, the governing body of any municipality in which the District is located and the Division; and

WHEREAS, the Local Government Budget Law of Colorado, Sections 29-1-101 *et seq.*, C.R.S., requires the Board to hold a public hearing on proposed budgets and amendments thereto, to adopt budgets and to file copies of the budgets and amendments thereto with the Division; and

WHEREAS, Section 29-1-205(1), C.R.S. requires the District to file a current list of all contracts in effect with other political subdivisions within thirty (30) days of receiving a request therefor from the Division; and

WHEREAS, in accordance with the Public Securities Information Reporting Act, Sections 11-58-101 *et seq.*, C.R.S., issuers of nonrated public securities shall make public within sixty (60) days following the end of each of such issuer's fiscal year, an annual information report or reports with respect to any of such issuer's nonrated public securities which are outstanding as of the end of each such fiscal year; and

WHEREAS, in accordance with Section 29-1-604(1), C.R.S., if expenditures and revenues of the District are not in excess of \$100,000, the District may file an application for exemption from audit with the State Auditor; or in accordance with Section 29-1-604(2)(b), C.R.S., if expenditures and revenues of the District for any fiscal year are at least \$100,000, but not more than \$750,000, the District may file an application for exemption from audit with the State Auditor; or in accordance with Section 29-1-603, C.R.S., the Board shall cause to be made an annual audit of the financial statements of the District for each fiscal year; and

WHEREAS, the Revised Uniform Unclaimed Property Act, Article 13 of Title 38, C.R.S., requires that governmental subdivisions, if applicable, file an annual report listing unclaimed property with the State Treasurer by November 1 of each year; and

WHEREAS, pursuant to Section 32-1-103(15), C.R.S., the legal notices of the District must be published one time, in one newspaper of general circulation in the District, and if there is not one such newspaper of general circulation, then in one newspaper in each county in which the District is located and in which the District also has fifty (50) or more eligible electors; and

WHEREAS, pursuant to Section 24-6-402(2)(c)(I), C.R.S., the Board shall annually designate, at the first regular meeting of the calendar year, a posting place within the boundaries of the District for posting of notices; and

WHEREAS, pursuant to Sections 32-1-903(2), 24-6-402(2)(c)(I) & (III), and 32-1-903(6)(c) C.R.S., in addition to any other means of full and timely notice, the Board shall be deemed to have given full and timely notice of a public meeting, including an annual meeting, if the Board posts the notice on a public website of the District or in the designated public place within District boundaries, no less than twenty-four (24) hours prior to the meeting; and

WHEREAS, Section 32-1-903(1), C.R.S. requires that the Board shall meet regularly at a time and location to be designated by the Board and such location may be physical, telephonic, electronic, other virtual place, or combination of such means where a meeting can be attended; provided that meetings that are held solely at physical locations must be held at physical locations that are within the boundaries of the District or within the boundaries of any county in which the District is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty (20) miles from the District boundaries, unless the proposed change of location for a meeting appears on the Board agenda of a meeting and a resolution is adopted stating the reason for which meetings of the Board are to be held in a physical location other than under the provisions of Section 32-1-903(1.5), C.R.S. and further stating the date, time and physical location of such meeting; and

WHEREAS, pursuant to Section 32-1-904, C.R.S., the office of the District shall be at some fixed place to be determined by the Board; and

WHEREAS, pursuant to Section 32-1-901(1), C.R.S., each Director, within thirty (30) days after his or her election or appointment to fill a vacancy, shall take an oath or affirmation in accordance with Section 24-12-101, C.R.S., and the oath must be filed with the County Clerk and Recorder, and in accordance with Section 32-1-901(1), C.R.S. with the Clerk of the Court and with the Division; and

WHEREAS, in accordance with Section 32-1-901(2), C.R.S., at the time of filing said oath, there shall also be filed for each Director a bond; and

WHEREAS, in accordance with Section 24-14-102(2), C.R.S., the District may, in lieu of the required bond, purchase crime insurance to protect the District from any dishonesty, theft, or fraud; and

WHEREAS, pursuant to Section 32-1-902(1), C.R.S., the Board shall elect one of its members as chairman of the Board and president of the District, one of its members as a treasurer of the Board and District, and a secretary who may be a member of the Board, or the secretary and treasurer may be one individual, who in such case is a member of the Board; and

WHEREAS, Directors may receive compensation for their services subject to the limitations imposed by Section 32-1-902(3)(a), C.R.S.; and

WHEREAS, Directors are governed by Section 32-1-902(3)(b), C.R.S., which requires any Director to disqualify himself or herself from voting on an issue in which he or she has a conflict of interest, unless the Director has properly disclosed such conflict in compliance with Section 18-8-308, C.R.S.; and

WHEREAS, Directors are governed by Section 32-1-902(4), C.R.S., which requires any Director who owns undeveloped land that constitutes at least twenty percent (20%) of the territory included in the District to properly disclose such fact in compliance with Section 18-8-308, C.R.S. before each meeting of the Board, and such disclosure must be entered into the minutes of such meeting; and

WHEREAS, pursuant to Section 32-1-1001(1)(o), C.R.S. the Board has the power to authorize the use of electronic records and electronic signatures and adopt rules, standards, policies, and procedures for use of electronic records or signatures in accordance with the Uniform Electronic Transaction Act, Sections 24-71.3-101 *et seq.*, C.R.S.; and

WHEREAS, pursuant to Section 24-72-204.5, C.R.S., should the District operate or maintain an electronic mail communications system, the Board must adopt a written policy on any monitoring of electronic mail communications and the circumstances under which it will be conducted; and

WHEREAS, Sections 32-1-1604 and 32-1-1101.5(1), C.R.S. require the District to issue notice of the authorization or incurrence of general obligation indebtedness to the Board of County Commissioners of each county in which the District is located or the governing body of the municipality that has adopted a resolution of approval of the District and to record such notice with the Clerk and Recorder in each county in which the District is located within thirty (30) days of incurring or authorizing such indebtedness; and

WHEREAS, Section 32-1-1101.5(1), C.R.S. requires the District to certify the results of ballot issue elections to incur general obligation indebtedness to the Board of County Commissioners of each county in which the District is located or to the governing body of a municipality that has adopted a resolution of approval of the District within forty-five (45) days after the election, or at least thirty (30) days before issuing any general obligation debt if not previously certified, and requires the District to file a copy of such certificate with the Division of Securities within that timeframe; and

WHEREAS, in accordance with Section 32-1-1101.5(1.5), C.R.S., the Board of County Commissioners or the governing body of a municipality that has adopted a resolution of approval of the District may require the District to file an application for the quinquennial finding of reasonable diligence; and

WHEREAS, in accordance with Section 32-1-207(3)(c), C.R.S., and unless otherwise waived or requested by an earlier date, any special district created after July 1, 2000, must electronically file an annual report for the preceding calendar year by October 1st with the governing body that approved the District's service plan or, if the jurisdiction has changed due to the annexation into a municipality, the current governing body with jurisdiction over the District, the Division, the State Auditor, and the County Clerk and Recorder, and make the same available on the website of the District; and

WHEREAS, in accordance with the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S., the Board is granted the authority to obtain insurance; and

WHEREAS, the Colorado Open Meetings Law at Section 24-6-402(2)(d.5)(II)(A), C.R.S. specifies that discussions that occur in an executive session of a local public body shall be electronically recorded; and

WHEREAS, pursuant to Section 24-6-402(2)(d.5)(II)(E), C.R.S., such electronic recording of executive sessions shall be retained for at least ninety (90) days after the date of the executive session; and

WHEREAS, in accordance with the Public Deposit Protection Act, Sections 11-10.5-101 *et seq.*, C.R.S., the Board shall designate an official custodian with plenary authority to deposit public funds in any bank which has been designated by the Colorado Banking Board as an eligible public depository; and

WHEREAS, in accordance with Section 32-1-104.8, C.R.S., the District must record a public disclosure document and a map of the boundaries of the District with the Clerk and

Recorder of each county in which the District is located at any time that an order or decree confirming the inclusion of real property into the District is recorded; and

WHEREAS, in accordance with Section 32-1-104.5, C.R.S., (1) within one year of the date an order and decree has been issued by a district court for a newly organized metropolitan district; or (2) for all metropolitan districts organized after January 1, 2000, such metropolitan district, shall establish, maintain and annually update an official website containing specific information as set forth in Section 32-1-104.5(3)(a), C.R.S.; and

WHEREAS, the Colorado Office of Information Technology adopted the Rules Establishing Technology Accessibility Standards as contained in 8 CCR § 1501-11, *et seq.*, (the “Accessibility Rules”) requiring the District comply with the Accessibility Rules; and

WHEREAS, elections may be held pursuant to the Special District Act, Article 1 of Title 32, C.R.S.; the Uniform Election Code of 1992, Articles 1 to 13 of Title 1, C.R.S.; and the Colorado Local Government Election Code, Article 13.5 of Title 1, C.R.S., for the purpose of (1) electing members of the Board; and (2) presenting certain ballot questions to the eligible electors of the District; and

WHEREAS, Sections 1-1-111(2), 1-13.5-108 and 32-1-804(2), C.R.S. provide that all powers and authority granted to the Board may be exercised by a “Designated Election Official” designated by the Board.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE HEATHER GARDENS METROPOLITAN DISTRICT AS FOLLOWS:

1. The Board directs the Heather Gardens Association’s general manager in accordance with the Management Agreement by and between the District and the Heather Gardens Association dated August 23, 2018, as may be amended from time to time (the “Manager”) to prepare an accurate map in accordance with the standards specified by the Division or directs the Manager to prepare a letter asserting there have been no changes in the boundaries of the District, as applicable, for filing with the County Assessor, County Clerk and Recorder and the Division as required by Section 32-1-306, C.R.S on or before January 1.
2. The Board directs the Manager to notify the Department of the District’s name, principal address and/or mailing address, agent’s name and agent’s mailing address in accordance with Sections 24-10-109 and 24-32-116, C.R.S.
3. The Board directs the Manager to: (1) provide notice, containing certain information about the District, to the eligible electors of the District, not earlier than November 16 and not later than January 15, in one or more of the ways set forth in Section 32-1-809(2), C.R.S; and (2) in accordance with Section 32-1-104(2), C.R.S., file a copy of the notice with the Board of County Commissioners, County Assessor, County Treasurer, County Clerk and Recorder’s Office in each county in which the District is located, the governing body of any municipality in

which the District is located and with the Division. The Board further directs that a copy of the notice shall be made available for public inspection at the principal business office of the District.

4. The Board directs the Manager for the District to submit a proposed budget to the Board by October 15; to schedule a public hearing on the proposed budget; to prepare a final budget, including any resolutions adopting the budget, appropriating moneys and fixing the rate of any mill levy; to prepare budget resolutions, including certification of mill levies and amendments to the budget if necessary; to certify the mill levies on or before December 15; and the Manager to file the approved budgets and amendments thereto with the proper governmental entities not later than thirty (30) days after the beginning of the fiscal year of the budget adopted, in accordance with the Local Government Budget Law of Colorado.
5. The Board directs the Manager to prepare and file a current list of all contracts in effect with other political subdivisions with the Division within thirty (30) days of receiving a request therefor from the Division, if applicable.
6. The Board directs the Manager to prepare and file the annual public securities report for nonrated public securities issued by the District with the Department within sixty (60) days following the end of the District's fiscal year, if applicable.
7. The Board directs the Manager to file either an application for exemption from audit with the State Auditor within three (3) months after the close of the District's fiscal year, or that an audit of the financial statements is prepared and submitted to the Board within six (6) months after the close of the District's fiscal year. Further, the Board directs that the audit report be filed with the State Auditor within thirty (30) days after the Board's receipt of the audit report from the auditor.
8. The Board directs the Manager to prepare the Unclaimed Property Act report and forward to the State Treasurer by November 1, if applicable.
9. The Board designates the *Sentinel* as a newspaper of general circulation within the boundaries of the District or in the vicinity of the District if none is circulated within the District, and directs that all legal notices shall be published in accordance with applicable statutes in the *Sentinel*.
10. The Board designates the URL Domain <https://www.hgmetrodist.org>, as the District's official website and posting place for notices of meetings in 2025 pursuant to Sections 24-6-402(2)(c) and 32-1-104.5, C.R.S. Further, in compliance with Section 24-6-402(2)(III), C.R.S., the Board designates the Heather Gardens Clubhouse, 2888 South Heather Gardens Way, Aurora, Colorado, as the public place within the boundaries of the District at which it may

post notices of meetings if it is unable to post a notice on the District's official website.

11. The Board directs **the Manager** to maintain and update the official website of the District in compliance with Section 32-1-104.5(3)(a), C.R.S. In addition, the Board directs **the Manager** to use their best efforts to comply with the Accessibility Rules in accordance with direction and guidance provided by the Board and the Colorado Office of Information Technology.
12. Emergency meetings may be called without notice, if notice is not practicable, by the president of the Board or any two (2) Directors in the event of an emergency that requires the immediate action of the Board in order to protect the public health, safety and welfare of the property owners and residents of the District. If possible, notice of such emergency meeting may be given to the Directors of the Board by telephone or whatever other means are reasonable to meet the circumstances of the emergency, and shall be provided to the public via any practicable means available, *if any*, including, but not limited to, posting notice of such emergency meeting on the District's website, if any. At such emergency meeting, any action within the power of the Board that is necessary for the immediate protection of the public health, safety and welfare may be taken; provided however, that any action taken at an emergency meeting shall be ratified at the first to occur: (a) the next regular meeting of the Board, or (b) the next special meeting of the Board.
13. The Board determines to hold regular meetings on **the third Thursday of each month, at 1:00 P.M. at the Heather Gardens Clubhouse, 2888 South Heather Gardens Way, Aurora, Colorado 80014**. Any additional means of public participation, if any, will be designated on the meeting agenda.
14. Pursuant to Section 32-1-904, C.R.S., the Board determined that the office of the District shall be at Heather Gardens Clubhouse, 2888 South Heather Gardens Way, Aurora, Colorado 80014.
15. The Board designates **_____** to administer oaths or affirmations in accordance with Section 24-12-103, C.R.S. The Board directs the Manager, with the assistance of legal counsel to prepare and file an oath or affirmation in accordance with Sections 32-1-901 and 24-12-101, C.R.S. In addition to the oath or affirmation, the Board directs the Manager to procure either crime insurance in accordance with Section 24-14-102(2), C.R.S. or a bond for each Director as required by Section 32-1-901, C.R.S. in the total amount of \$10,000, and to file copies of the crime insurance or bond with the Clerk of the Court and the Division.
16. The Board hereby acknowledges that the District's Bylaws, adopted on June 15, 2023, and as may be amended from time to time, provide as follows regarding election of officers: "Election of officers shall be conducted annually at the first

regular or special District meeting held in May, which, in off-numbered years occurs after the election, and at any other time that a vacancy in an office may occur.” In accordance therewith, the Board elected the following officers for the District:

President/Chairman:	William Gold
Vice President:	Eloise Laubach
Treasurer:	David Kennedy
Secretary:	Forrest McClure
Director:	Steven Stratton

17. The Board directs that each Director may receive compensation for services as Directors in accordance with Sections 32-1-902(3)(a)(I) & (II), C.R.S.
18. The Board has determined that when so directed by one or more Directors legal counsel will file conflict-of-interest disclosures provided by Directors with the Secretary of State seventy-two (72) hours prior to each meeting of the Board. In addition, written disclosures provided by Directors required to be filed with the governing body in accordance with Section 18-8-308, C.R.S. shall be deemed filed with the Directors of the District when filed with the Secretary of State.
19. The Board authorizes the use of electronic records and electronic signatures. Use of electronic records and electronic signatures, when conducting transactions and in relation to the administration of the affairs of the District, will be performed and governed in accordance with the Uniform Electronic Transactions Act, Sections 24-71.3-101 *et seq.*, C.R.S.
20. The Board began operating a District electronic mail communication system devoted to the District and directs legal counsel to prepare an electronic mail system monitoring policy for its consideration. The Board recognizes that electronic mail communications may be a public record under the Colorado Open Records Act and may be subject to public inspection under Section 24-72-203, C.R.S.
21. The Board directs the Manager to issue notice of indebtedness to the Board of County Commissioners or to the governing body of the municipality that has adopted a resolution of approval of the District, as applicable, and to record such notice with the County Clerk and Recorder in each county in which the District is located within thirty (30) days of incurring or authorizing any indebtedness in accordance with Sections 32-1-1604 and 32-1-1101.5(1), C.R.S. The Board also directs the Manager to certify the results of any ballot issue election to incur general obligation indebtedness to the Board of County Commissioners of each county in which the District is located, to the governing body of a municipality that has adopted a resolution of approval of the District, as applicable, and the Division of Securities within forty-five (45) days after such election, or at least

thirty (30) days before the District's issuance of any general obligation debt if not previously certified, in accordance with Section 32-1-1101.5(1), C.R.S.

22. The Board directs the Manager to prepare and file, if requested, the quinquennial finding of reasonable diligence with the Board of County Commissioners or to the governing body of a municipality that has adopted a resolution of approval of the District, as applicable, in accordance with Section 32-1-1101.5(1.5), C.R.S.

The Board acknowledges that it is not obligated to prepare and file an annual report in accordance with Section 32-1-207(3)(c), C.R.S. because the District was created prior to July 1, 2000, and the Service Plan for the District does not contain an annual report requirement.

23. The District is currently a member of the Special District Association ("SDA") and insured through the Colorado Special Districts Property and Liability Pool. The Board directs the Manager to pay the annual SDA membership dues and insurance premiums in a timely manner and complete all necessary conditions of the third-party insurance agent, as applicable. The Board will review all insurance policies and coverage in effect to determine appropriate insurance coverage is maintained, at least biannually.
24. The Board directs the custodian of all electronic recordings of executive sessions to retain all electronic recordings of executive sessions for purposes of the Colorado Open Meetings Law for ninety (90) days after the date of the executive session. The Board further directs the custodian to systematically delete all recordings of executive sessions made for purposes of the Colorado Open Meetings Law at its earliest convenience after the ninetieth (90th) day after the date of the executive session.
25. The Board hereby designates **the Manager** as its official custodian over public deposits in accordance with Sections 11-10.5-101 *et seq.*, C.R.S.
26. The Board directs legal counsel to prepare the special district public disclosure statement in accordance with Section 32-1-104.8, C.R.S. and record the statement with the County Clerk and Recorder at any such time as a decree or order of inclusion of real property into the District's boundaries is recorded.
27. AJ Beckman of Public Alliance, LLC, is hereby appointed as the "Designated Election Official" of the Board for any elections to be held during 2025 and any subsequent year unless another Designated Election Official is appointed by resolution. The Board hereby grants all powers and authority for the proper conduct of the election to the Designated Election Official, including, but not limited to, appointing election judges, appointing a canvass board, cancelling the election, if applicable, and certifying election results.
28. The Board hereby authorizes legal counsel to use the District's name and a brief

description of the work performed for the District for marketing purposes, including identifying the District in presentations, proposals, and publications, provided that no confidential information about the District is revealed.

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Whereupon a motion was made and seconded, and upon a majority vote this Annual Resolution was approved by the Board.

ADOPTED AND APPROVED THIS 16TH DAY OF JANUARY 2025.

HEATHER GARDENS METROPOLITAN DISTRICT

William Gold, President

ATTEST:

Forrest

McClure,

Secretary

CERTIFICATION

I, Forrest McClure, Secretary of the Board of the Heather Gardens Metropolitan District, do hereby certify that the annexed and foregoing Resolution is a true copy from the records of the proceedings of the Board of said District, on file with Icenogle Seaver Pogue, P.C., general counsel to the District.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the District, at the County of Arapahoe, Colorado, this 16th day of January 2025.

Forrest McClure, Secretary

[SEAL]

ELECTION SERVICES AGREEMENT

This **ELECTION SERVICES AGREEMENT** (the “Agreement”) is entered into effective as of _____, by and between the **HEATHER GARDENS METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and **PUBLIC ALLIANCE, LLC**, a Colorado limited liability company (the “Consultant”), (collectively referred to herein as the “Parties”).

RECITALS

WHEREAS, the District was organized pursuant to the Special District Act, Article 1 of Title 32, C.R.S. (the “Act”), after approval of the eligible electors of the District, by order of the District Court in and for Arapahoe County, Colorado, dated April 6, 1983; and

WHEREAS, the District is governed by an elected Board of Directors comprised of eligible electors of the District (the “Board”); and

WHEREAS, the Board currently includes five (5) members elected/appointed to staggered terms; and

WHEREAS, the terms of office for two (2) members of the Board shall expire after their successors are elected at the next regular special district election scheduled to be held on May 6, 2025 (the “Election”); and

WHEREAS, the term for two (2) members of the Board for the District, who were appointed to fill vacancies on the Board and to serve until the next regular election, shall expire after his or her successors are elected at the election to serve the remaining unexpired portion of the term, which is two years; and

WHEREAS, elections may be held pursuant to the Act; the Uniform Election Code of 1992, Articles 1 to 13 of Title 1, C.R.S. (the “Uniform Code”); and the Colorado Local Government Election Code, Article 13.5 of Title 1, C.R.S. (the “Local Government Code”) (the Act, Uniform Code, and Local Government Code are collectively referred to herein as the “Election Laws”) for the purpose of 1) electing members of the Board and 2) presenting certain ballot questions to the eligible electors of the District; and

WHEREAS, in accordance with the Election Laws, an election must be conducted to elect to the Board of the District two (2) Directors to serve for terms of four years and two (2) Directors to serve terms of two years; and

WHEREAS, pursuant to § 32-1-1001(1)(d)(I), C.R.S., the District is permitted to enter into contracts affecting its affairs; and

WHEREAS, the number of Directors to be elected to the Board of the District may increase following the execution of this Agreement should a Director’s office be deemed vacant in accordance with § 32-1-905, C.R.S. prior to the election; and

WHEREAS, the District desires to retain the Consultant, in the capacity of an independent contractor, to manage and conduct all of the District’s affairs and requirements with respect to the Election (as further defined herein, the “Election Services”); and

WHEREAS, the Consultant has experience in providing the types of services required by the District and desires to provide the Election Services; and

WHEREAS, the Parties desire to enter into this Agreement to establish the terms and conditions by which the Consultant will provide the Election Services to the District.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

COVENANTS AND AGREEMENTS

1. APPOINTMENT OF CONSULTANT. The District hereby retains the Consultant, and the Consultant agrees to perform the Election Services for the District pursuant to the terms and conditions set forth herein.

2. TERM. The term of this Agreement shall begin on the date set forth above, shall be effective as of such date regardless of the date of execution hereof, and shall expire on July 1, 2025 or upon earlier termination as provided herein. Extensions of this Agreement may take the form of letter agreements signed by all Parties.

3. ELECTION SERVICES. The Consultant shall manage, conduct, and provide for all of the District’s affairs and requirements with respect to the Election, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the “Election Services”). The Consultant shall provide the “Additional Election Services” described in **Exhibit A-1**, attached hereto and incorporated herein by this reference, only as deemed necessary by the District. The Consultant shall obtain approval from the District prior to providing any services that vary from the Election Services set forth herein. The Election Services may be provided by one or more employees or principals of the Consultant.

4. GENERAL DUTIES AND AUTHORITY. In connection with the Election Services, the Consultant agrees to:

A. Provide all Election Services in a good and workmanlike manner using that degree of skill and knowledge customarily employed by others performing similar services in the Denver metropolitan area and in accordance with any and all specifications authorized or ratified by the Board.

B. Furnish, or cause to be furnished, all labor, materials, equipment and accessories, as necessary, to provide such Election Services.

C. Advise the District of the status of the Election Services required by this Agreement on a regular basis and work in coordination with the District's staff and consultants to assure the District has the most complete information available for the exercise of the District's powers and discretionary authority.

D. Refrain from entering into any contract, oral or written, in the name of the District, and from incurring any debt, liability or obligation for or on behalf of the District, unless approved in accordance with Paragraph 5 below.

5. GENERAL LIMITATIONS AND REQUIREMENTS. The Consultant shall perform the duties and have the authority specified in Paragraphs 3 and 4 above. The Consultant shall have no right or authority, express or implied, to take any action, expend any sum, incur an obligation, or otherwise obligate the District in any manner whatsoever, except to the extent specifically provided in this Agreement or specifically authorized or ratified by the Board as reflected in the meeting minutes of the Board. The Consultant shall at all times conform to the stated policies established and approved by the District.

6. COMPLIANCE WITH APPLICABLE LAWS. The Consultant shall provide the Election Services set forth herein in full compliance with all applicable laws, ordinances, rules, and regulations of any federal, state, county, or municipal body or agency thereof having jurisdiction in which this Agreement is performed. The Consultant declares that Consultant has complied with all federal, state and local laws regarding business permits, certificates and licenses that may be required to carry out the Election Services to be provided under this Agreement.

7. INDEPENDENT CONTRACTOR STATUS. The Consultant is and shall be considered an independent contractor under this Agreement. Nothing contained herein shall constitute or designate the Consultant or any of its employees or agents as employees or agents of the District, nor shall the Consultant be deemed or considered as a partner or agent of the District. The Consultant shall have full power and authority to select the means, manner and method of performing its duties under this Agreement without detailed control or direction of the District, except as set forth in this Agreement. **AS AN INDEPENDENT CONTRACTOR, THE CONSULTANT ACKNOWLEDGES AND AGREES, PURSUANT TO SECTION 8-40-202(2)(b)(IV), C.R.S., THAT IT IS NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS AND THAT THE CONSULTANT, AS AN INDEPENDENT CONTRACTOR, IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED PURSUANT TO THIS CONTRACT RELATIONSHIP.**

8. COMPENSATION.

A. Compensation Amount. The District shall compensate the Consultant for the Election Services performed pursuant to this Agreement, subject to the District's annual appropriations and in accordance with and subject to all of the conditions of this Agreement, for the estimated cost of forty-four thousand three hundred Dollars (\$44,300), based upon unit prices and hourly rates set forth in **Exhibit B**. Any Additional

Election Services deemed necessary by the District and thereafter performed by the Consultant are subject to the hourly rates set forth in Exhibit B.

B. Monthly Reports and Payments. The Consultant shall submit to the District a monthly report, in a form acceptable to the District, which describes the Election Services performed and summarizes costs paid to date by the District (if applicable) and the amount currently due to the Consultant. The Consultant shall submit its report together with its invoice to the District by the 5th day of each month for Election Services completed in the preceding month. The Board shall review and approve all invoices received for payment at the next meeting of the Board. The District reserves the right to evaluate all Election Services completed and invoiced for payment. In the event Election Services are not accepted for payment by the District, the terms of Paragraph 8(C) hereof shall apply.

C. Evaluation of Services. The District may evaluate the Election Services provided at any time throughout the term of this Agreement and shall notify the Consultant if, in the District's discretion, any or all of the Election Services are not provided in accordance with this Agreement. Failure by the Consultant to properly provide the Election Services required by this Agreement shall constitute a default hereunder. In such case, the District shall provide written notice of said default to the Consultant. The Consultant shall have two (2) days to cure the default unless otherwise agreed to by the Parties. If the Consultant fails to cure the default within the time period provided, the District shall be entitled to pursue all remedies provided by law and in equity, including specific performance, and to recover all costs and reasonable attorneys' fees incurred in any suit or claim brought by the District to enforce the terms of this Agreement. In addition, in the event of default by the Consultant, the District may hire a third party to complete the Election Services, and the Consultant agrees to pay all additional costs incurred for completion of the Election Services by a third party.

D. Expenses. The Consultant shall be responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as set forth in Paragraph 8(A) above unless such expenses are approved for reimbursement in advance by the District in writing. The Consultant shall not charge the District any other fee for use by the District of the Consultant's offices, personnel, or overhead except as agreed in advance by the District in writing.

9. TERMINATION NOT FOR CAUSE. In addition to any other rights provided herein, the District shall have the right, at any time and in its sole discretion, to terminate, not for cause, in whole or in part, this Agreement and further performance of the Election Services by delivery to the Consultant of written notice of termination specifying the extent of termination and the effective date of termination. As a result of a termination not for cause, the District shall pay the Consultant, in accordance with the provisions hereof, for Election Services performed up to the termination and unpaid at termination.

10. LIABILITY OF THE DISTRICT. No provision, covenant or agreement contained in this Agreement, nor any obligations herein imposed upon the District shall

constitute or create an indebtedness or debt of the District within the meaning of any Colorado constitutional provision or statutory limitation.

11. SUBJECT TO ANNUAL BUDGET AND APPROPRIATION. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The performance of those obligations of the District hereunder requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations.

12. NOTICES. Any notices, demands, or other communications required or permitted to be given by any provision of this Agreement shall be given in writing, delivered personally, sent by facsimile with a hard copy sent immediately thereafter via First Class U.S. Mail, or sent via First Class U.S. Mail, postage prepaid and return receipt requested, and addressed to the Parties at the information set forth below.

If to the District: Heather Gardens Metropolitan District
Heather Gardens Clubhouse
2888 South Heather Gardens Way
Aurora, Colorado 80014
Attn: Evelyn Ybarra

Copy to: Icenogle Seaver Pogue, P.C.
4725 South Monaco Street, Suite 360
Denver, CO 80237
Attn.: Jennifer L. Ivey

If to the Consultant: Public Alliance, LLC
405 Urban St., Suite 310
Lakewood, CO 80228

Either party may change its address for the purpose of this Paragraph by giving written notice of such change to the other party in the manner provided in this Paragraph.

13. INDEMNIFICATION. The Consultant shall indemnify, defend and hold harmless the District and each of its directors, employees, agents and consultants, from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, and expenses (including reasonable attorneys' fees), and liabilities of, by or with respect to, third parties ("any claims") to the extent they arise from or may be alleged to arise, directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the Consultant or any of its subcontractors, agents or employees, in connection with this Agreement and/or the Election Services provided hereunder. Further, the Consultant hereby agrees to indemnify, defend and hold harmless the District and each of its directors and employees from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs and expenses (including reasonable attorneys' fees) and liabilities of, by or with respect to, third parties ("any claims"), arising directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the Consultant, its employees, subcontractors, agents or employees, or the agents or employees of any

subcontractors which causes or allows to continue a condition or event which deprives the District or any of its directors or employees of its sovereign immunity under the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, Colorado Revised Statutes. Nothing in this Agreement or in any actions taken by the District pursuant to this Agreement shall be deemed a waiver of the District's sovereign immunity under the Colorado Governmental Immunity Act. Provided, however, that such Consultant shall not be liable for any claim, loss, damage, injury or liability arising out of negligence of the District, its directors, employees, agents and consultants. The obligations of the indemnifications extended by the Consultant to the District under this Paragraph shall survive termination or expiration of this Agreement.

14. INSURANCE. The Consultant shall secure and maintain for the term of this Agreement adequate statutory workers' compensation insurance coverage and comprehensive general liability insurance coverage, from companies licensed in the State of Colorado, as will protect itself, the District and others as specified, from claims for bodily injuries, death, personal injury or property damage, which may arise out of or result from the Consultant's acts, errors or omissions. To provide evidence of the required insurance coverage, copies of Certificates of Insurance shall be furnished to the District.

15. RECORD KEEPING REQUIREMENT. The Consultant shall maintain all records and documents relating to this Agreement for three (3) years after the termination or expiration of this Agreement. This includes all books and other evidence bearing on the Consultant's costs and expenses under this Agreement. The Consultant shall make these records and documents available to the District, at the Consultant's office, at all reasonable times, without any charge. If accepted by the District, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents.

16. WORK PRODUCT. All work product of the Consultant prepared pursuant this Agreement, including but not limited to all plans, drawings, specifications, reports, electronic files and other documents, in whatever form, shall remain the property of the District under all circumstances, whether or not the Election Services are completed. When requested, all work product shall be delivered to the District in a format compatible to the District's computer applications. All work product shall be provided to the District at the time of completion of any of the discrete tasks specified in the Election Services or at the time of termination of this Agreement, whichever event first occurs, and shall be provided to the District's successor or to any subsequent owners, only with the District's express permission. The Consultant shall maintain copies on file of any such work product involved in the Election Services for three (3) years, shall make them available for the District's use, and shall provide such copies to the District, upon request, at commercial printing or reproduction rates. At any time within the three (3) years during which Consultant must retain copies of all work product involved in the Election Services, the District may obtain copies of the Consultant's work product by paying printing or reproduction costs as set forth above.

17. CONSULTANT'S TRADE SECRETS AND OPEN RECORDS REQUESTS.

a. Application of the Act. The Consultant acknowledges and agrees that all documents in the District's possession or which the District has a right to have in its

possession pursuant to this Agreement, including documents submitted by the Consultant, are subject to the provisions of the Colorado Open Records Act, Sections 24-72-200.1 *et seq.*, Colorado Revised Statutes, and the Consultant acknowledges that the District shall abide by the Colorado Open Records Act, including honoring all proper public records requests made thereunder. The Consultant shall be responsible for all costs incurred in connection with any determinations required to be made by a court, pursuant to the Colorado Open Records Act. The Consultant is advised to contact legal counsel concerning such acts in application of the Colorado Open Records Act to the Consultant.

b. Confidential or Proprietary Materials. If the Consultant deems any document(s) which it submits to the District to be confidential, proprietary, or otherwise protected from disclosure under the Colorado Open Records Act, then it shall appropriately label such document(s), and submit such document to the District together with a written statement describing the material which is requested to remain protected from disclosure and the justification for such request. This request will either be approved or denied by the District; however, the District will make a good-faith effort to accommodate all reasonable requests, subject to the provisions of the Colorado Open Records Act.

c. Stakeholder. In the event of litigation concerning the disclosure of any document(s) submitted by the Consultant to the District or which the District has a right to have in its possession pursuant to this Agreement, the District's sole involvement will be as stakeholder retaining the document(s) or having a right thereto until otherwise ordered by the court, and the Consultant shall be fully responsible for otherwise prosecuting or defending any actions concerning the document(s) at its sole expense and risk.

18. PERSONS INTERESTED HEREIN. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or to give to any person, other than the Parties hereto, any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all of the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties hereto.

19. MODIFICATION. This Agreement may be modified, amended or changed, except as otherwise provided herein, in whole or in part, only by an agreement in writing duly authorized and executed by both Parties.

20. ASSIGNMENT. The Consultant shall not assign this Agreement or any interest hereunder, in whole or in part, without the prior written consent of the District, which consent may be withheld for any reason or for no reason. The District shall provide written consent only upon assurance from the Consultant that each proposed subcontract is evidenced in writing and contains all pertinent provisions and requirements of this Agreement. Any improper attempt of assignment shall be deemed void and of no force or effect. Consent to one assignment shall not be deemed to be consent to any subsequent assignment nor the waiver of any right to consent to such subsequent assignment.

21. SEVERABILITY. The invalidity or unenforceability of any portion or previous version of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provisions.

22. NON-WAIVER. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed to be a waiver of any subsequent default hereunder.

23. GOVERNING LAW AND VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and venue for any dispute hereunder shall lie in the Arapahoe County District Court.

24. BINDING AGREEMENT. This Agreement shall inure to and be binding on the heirs, executors, administrator, successors, and permitted assigns of the Parties hereto.

25. INTEGRATION. This Agreement contains the entire agreement between the Parties, and no statement, promise or inducement made by either party or the agent of either party that is not contained in this Agreement shall be valid or binding.

26. HEADINGS FOR CONVENIENCE ONLY. The headings, captions and titles contained herein are intended for convenience and reference only and are not intended to construe the provisions hereof.

27. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the day and year first above written. By signature of its representatives below, each party affirms it has taken all necessary action to authorize said representative to execute this Agreement.

HEATHER GARDENS METROPOLITAN DISTRICT

By: _____
Its: _____

ATTEST:

PUBLIC ALLIANCE, LLC

By: _____
Its: _____

ATTEST:

EXHIBIT A

Election Services

The Election Services to be provided by the Consultant may include, but are not limited to, the following.

ACTION
Inform Clerk and Recorder of election and participation/non participation
Prepare call for nominations for review by legal counsel/publish, mail, e-mail and/or post as required prior to deadline
Provide, verify, and process Self-Nomination and Acceptance Forms and notify candidates of sufficiency or insufficiency of the same
Determine order of candidates on ballot
Certify order and ballot content
File nomination petitions with Secretary of State
Prepare ballots in accordance with statute
Prepare notice of election for review by legal counsel/publish prior to deadline/transmit to Clerk and Recorder
Mail ballots available for “inactive” persons
Mail ballots to each active registered elector and eligible elector
Monitor campaign and political finance filings
Provide polling place/mail ballot drop off location/walk in voting location(s) and signs therefor as required by the Election Laws
Appoint canvass board
Provide ballots for absentee voters and in-person voters
Provide instruction cards and necessary Election Services materials
Count ballots/provide Election Day services including posting of election abstract
Conduct canvass board meeting
File certified statement of results with Division of Local Government and individuals elected to office
Work with legal counsel to complete “post election” filings Prepare Certificate of Election Results Oaths for new directors
Additional election services as requested

EXHIBIT A-1

Additional Election Services

The Additional Election Services may include, but are not limited to, the following:

FOR RECOUNT:

ACTION
Receive request for recount
Conduct recount (if difference between two highest number of votes is less than or equal to 0.5%)
Conduct recount if requested under § 1-13.5-1306(2)(a), C.R.S.
Submit recount results

EXHIBIT B

Election Services	\$ <u>31,500</u>
Election Hard Costs (ballot packet, postage, etc.)	\$ <u>12,800</u>
TOTAL Estimate	\$ <u>44,300</u>

The hours spent to conduct an election can vary depending on community involvement and interest and the need for community/coordination meetings. The Consultant bills on a time and materials basis. The District will only be billed for actual time spent. The Consultant anticipates that a majority of the time spent on Election Services will be billed at \$145 per hour. The District will be responsible to pay all hard costs directly to the vendors, such as printing and mailing of ballots.

BOARD OF DIRECTORS OF HEATHER GARDENS METROPOLITAN DISTRICT

**A RESOLUTION ADOPTING THE HEATHER GARDENS METROPOLITAN DISTRICT
TECHNOLOGY ACCESSIBILITY STATEMENT AND TECHNICAL STANDARDS**

At a regular meeting of the Board of Directors of the Heather Gardens Metropolitan District, City of Aurora, Arapahoe County, Colorado, held at 1:00 P.M., on Thursday, January 16, 2025 at the Heather Gardens Clubhouse, 2888 South Heather Gardens Way, Aurora, Colorado 80014, and via videoconference at <https://us06web.zoom.us/j/81601701147> and via telephone conference at Dial In: +1 346 248 7799, Meeting ID: 816 0170 1147, Password Not Required, at which a quorum was present, the following resolution was adopted:

WHEREAS, the Heather Gardens Metropolitan District (the “District”) is a special district organized and existing pursuant to Sections 32-1-101 et seq., C.R.S.; and

WHEREAS, the Board of Directors of the District (collectively referred to as the “Board” or individually as “Director(s)”) has a duty to perform certain obligations in order to assure the efficient operation of the District; and

WHEREAS, pursuant to Section 32-1-1001(1)(m), C.R.S., the District’s Board is authorized to adopt, amend, and enforce bylaws and rules and regulations not in conflict with the constitution and the laws of the State for carrying on the business, objects, and affairs of the Board and the District; and

WHEREAS, the Colorado Anti-Discrimination Act (“CADA”), as set forth in Title 24, Article 34, Parts 3 through 8 of the Colorado Revised Statutes provides that it is unlawful to discriminate against an individual with a disability as that term is defined in Section 24-34-301(7), C.R.S.; and

WHEREAS, the Colorado General Assembly, through House Bill 21-1110 and subsequently amended by Senate Bill 23-244 (the “Technology Accessibility Bills”), amended CADA to include certain provisions regarding website accessibility for individuals with disabilities; and

WHEREAS, the Technology Accessibility Bills require the Colorado Office of Information Technology (the “OIT”) to establish rules regarding information technology systems accessibility standards for individuals with disabilities; and

WHEREAS, on February 23, 2024, the OIT adopted the Rules Establishing Technology Accessibility Standards as contained in 8 CCR § 1501-11, *et seq.*, (the “Accessibility Rules”) requiring all public entities and state agencies, as such terms are defined in the Accessibility Rules, to comply with the Accessibility Rules; and

WHEREAS, 8 CCR § 1501-11.4 specifically defines the term public entity to include special districts; and

WHEREAS, compliance with the Accessibility Rules requires the District to adopt and publicly post in a conspicuous place a Technology Accessibility Statement, as such term is defined in the Accessibility Rules, by July 1, 2024; and

WHEREAS, the Technical Standards is defined in the Accessibility Rules at Section 11.5(a) as Web Content Accessibility Guidelines (“WCAG”) 2.1 Level AA; and

WHEREAS, the Accessibility Rules require the District to ensure applicable information and communication technology (the “ICT”), as such term is defined in the Accessibility Rules, is compliant with the Technical Standards by July 1, 2024; and

WHEREAS, the District desires to adopt and implement the Technical Standards and required Technology Accessibility Statement in accordance therewith; and

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE HEATHER GARDENS METROPOLITAN DISTRICT AS FOLLOWS:

1. Accessibility Rules. The District recognizes the adoption of the Accessibility Rules, as contained within 8 CCR § 1501-11, *et seq.*, and shall endeavor to comply with the applicable requirements contained therein.
2. Technology Accessibility Statement. The District approves the adoption of the Technology Accessibility Statement attached hereto in Exhibit A (the “Statement”) in accordance with Section 11.6 of the Accessibility Rules and recognizes that such Statement will be posted publicly in a conspicuous location on the District’s website/at the following location: <https://www.hgmetrodist.org>.
3. Actions to Effectuate Resolution. Management and legal counsel for the District are authorized and directed to take all actions necessary and appropriate to effectuate this Resolution and the imposition of the Technology Accessibility Statement and Technical Standards contemplated hereunder. All actions not inconsistent with the provisions of this Resolution heretofore taken by the members of the Board of Directors and/or management or legal counsel for the District and the officers, agents and employees of the District and directed toward effectuating the purposes stated herein are hereby ratified, approved and confirmed.
4. Effective Date. This Resolution Adopting the Heather Gardens Metropolitan District Technology Accessibility Statement and Technical Standards shall take effect on the date and at the time of its adoption.

[Remainder of page intentionally left blank.]

APPROVED AND ADOPTED THIS 16th DAY OF January 2025.

HEATHER GARDENS
METROPOLITAN DISTRICT

By: William Gold
Its: President

HEATHER GARDENS METROPOLITAN DISTRICT TECHNOLOGY ACCESSIBILITY STATEMENT

Heather Gardens Metropolitan District (the “District”) is committed to providing equitable access to our services, programs, and activities to all members of the public. The District’s ongoing accessibility efforts work toward being compliant with the Web Content Accessibility Guidelines (WCAG) version 2.1, level AA criteria. The District welcomes comments on how to improve its technology’s accessibility for users with disabilities as well as requests for reasonable modifications and/or accommodation to any District services, programs, and/or activities.

Please let us know if you encounter inaccessible information and communication technology. The District is committed to responding to requests for reasonable modifications and/or accommodation as well as reports of accessibility issues in a timely manner.

For reports of inaccessible information and communication technology or to request reasonable modifications or accommodations to District information and communication technology, please contact the District at:

Phone: 303- 755-0652

E-mail: questions@hgmetrodist.org

Mailing Address: Heather Gardens Clubhouse, 2888 South Heather Gardens Way, Aurora, Colorado 80014

Physical Address: Heather Gardens Clubhouse, 2888 South Heather Gardens Way, Aurora, Colorado 80014

**RESOLUTION OF
THE BOARD OF DIRECTORS OF
HEATHER GARDENS METROPOLITAN DISTRICT
2025 REGULAR SPECIAL DISTRICT ELECTION RESOLUTION**

At a regular meeting of the Board of Directors of the Heather Gardens Metropolitan District, City of Aurora, Arapahoe County, Colorado, held at 1:00 P.M., on Thursday, January 16, 2025, Heather Gardens Clubhouse, 2888 S. Heather Gardens Way, Aurora, Colorado 80014, via videoconference at <https://us06web.zoom.us/j/81601701147> and via telephone conference at Dial In: +1 346 248 7799 , Meeting ID: 816 0170 1147, Password Not Required, at which a quorum was present, the following resolution (the “Resolution”) was adopted:

WHEREAS, Heather Gardens Metropolitan District (the “District”) was organized pursuant to the Special District Act, Article 1 of Title 32, C.R.S. (the “Act”), after approval of the eligible electors of the District, by order of the District Court in and for Arapahoe County, Colorado, dated April 6, 1983; and

WHEREAS, elections may be held pursuant to the Act; the Uniform Election Code of 1992, Articles 1 to 13 of Title 1, C.R.S. (the “Uniform Code”); and the Colorado Local Government Election Code, Article 13.5 of Title 1, C.R.S. (the “Local Government Election Code”) (the Act, Uniform Code, and Local Government Election Code are collectively referred to herein as the “Election Laws”) for the purpose of 1) electing members of the Board and 2) presenting certain ballot questions to the eligible electors of the District; and

WHEREAS, pursuant to Section 32-1-305.5(3)(a), C.R.S., the term of office of members of the Board of Directors for the District (the “Board”) elected in a regular special district election is four (4) years; and

WHEREAS, the Board currently includes three (3) members elected to serve on the Board, two (2) members appointed to fill vacancies on the Board, and zero (0) vacancies; and

WHEREAS, the term of office for two (2) members of the Board for the District shall expire after their successors are elected at the next regular election for the District scheduled to be held on the Tuesday succeeding the first Monday of May in accordance with Section 1-13.5-111(1), C.R.S.: May 6, 2025; and

WHEREAS, the term for two (2) members of the Board for the District, who were appointed to fill vacancies on the Board and to serve until the next regular election, shall expire after their successors are elected at the election to serve the remaining unexpired portion of the term, which is two years; and

WHEREAS, in accordance with the Election Laws, an election must be conducted to elect to the Board of the District two (2) Directors to serve for terms of four years and two (2) Directors to serve terms of two years; and

WHEREAS, the number of Directors to be elected to the Board of the District may increase following the adoption of this Resolution should a Director's office be deemed vacant in accordance with Section 32-1-905, C.R.S. prior to the election; and

WHEREAS, pursuant to Section 32-1-804(1), C.R.S., the Board shall govern the conduct of the election and shall render all interpretations and make all decisions as to controversies or other matters arising in the conduct of the election; and

WHEREAS, Sections 1-1-111(2), 1-13.5-108, and 32-1-804(2), C.R.S. provide that all powers and authority granted to the Board for the conduct of regular and special elections, including making all initial decisions as to controversies or other matters arising in the operation of the Local Government Election Code, may be exercised by a "Designated Election Official" designated by the Board; and

WHEREAS, Sections 1-13.5-501(1) & -(1.5), C.R.S., require that, between seventy-five (75) and one hundred (100) days before a regular election, the Designated Election Official shall provide notice of a call for nominations for the election by publication, as defined in Section 1-13.5-501(2), C.R.S., and by any one of the following means: mailing the notice to each address at which one or more active registered electors resides as specified in the registration list provided by the county clerk and recorder as of the date that is one hundred fifty (150) days prior to the election; including the notice as a prominent part of an informational mailing sent by the District to the eligible electors of the District; posting the information on the official website of the District; or, if permitted under Section 1-13.5-501(1.5)(d), C.R.S., posting the notice in at least three public places within the boundaries of the District and, in addition, in the office of the Clerk and Recorder of Arapahoe County; and

WHEREAS, Section 1-13.5-1104(2), C.R.S. requires the Designated Election Official to supervise the distributing, handling, and counting of ballots and the survey of returns, and to take the necessary steps to protect the confidentiality of the ballots cast and the integrity of the election; and

WHEREAS, Section 1-7.5-107(4)(b)(II), C.R.S. specifies that the Designated Election Official shall designate a secure drop-off location that is under his or her supervision, and Section 1-5-102(1), C.R.S. requires that the Designated Election Official divide the jurisdiction into as many election precincts as he or she deems expedient for the convenience of eligible electors of the jurisdiction and designate the polling place for each precinct; and

WHEREAS, Section 1-13.5-1004(1), C.R.S. provides that the Designated Election Official shall keep a list of names of eligible electors who have applied for absentee voters' ballots and those permanent absentee voters placed on the list pursuant to Section 1-13.5-1003(2), C.R.S., which list must contain certain other information as set out by statute; and

WHEREAS, Section 1-13.5-513(1), C.R.S. provides that if the only matter before the electors in an election is the election of persons to office and if, at the close of business day on the sixty-third (63rd) day before the election or at any time thereafter, there are not more candidates than

offices to be filled at the election, the Designated Election Official shall cancel the election and declare the candidates elected if so instructed by resolution of the governing body; and

WHEREAS, Section 1-11-103(3), C.R.S. provides that if an election is cancelled pursuant to Section 1-13.5-513(1), C.R.S., the District shall file notice and a copy of the resolution of such cancellation with the Colorado Division of Local Government (the “Division”); and

WHEREAS, Sections 1-11-103(3) & 32-1-104(1), C.R.S. require the District to certify to the Division the results of any elections held by the District and include the District’s business address, telephone number, and contact person; and

WHEREAS, the Board desires to call an election and set forth herein the procedures for conducting such election as authorized by the Election Laws.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE HEATHER GARDENS METROPOLITAN DISTRICT THAT:

1. The Board hereby calls a regular election of the eligible electors of the District to be held between the hours of 7:00 A.M. and 7:00 P.M. on the Tuesday succeeding the first Monday of May pursuant to and in accordance with Section 1-13.5-111(1), C.R.S., the Election Laws, and other applicable laws (May 6, 2025), for the purpose of electing two (2) Directors to serve a four-year term and two (2) Directors to serve a two-year term on the Board (the “Election”), as such numbers may change due to one or more vacancies arising on the Board after the adoption of this Resolution and prior to the Election. The Election shall be conducted as an independent mail ballot election, pursuant to Part 11 of the Local Government Election Code.

2. Pursuant to Section 32-1-804(2), C.R.S., the Board hereby names AJ Beckman of Public Alliance, LLC, as the Designated Election Official for the Election. The Board hereby directs the District’s general counsel to oversee the general conduct of the Election and authorizes the Designated Election Official to take all other action necessary for the proper conduct thereof. The Designated Election Official shall act as the primary contact with the Clerk and Recorder of Arapahoe County, Colorado (the “County”) and shall be primarily responsible for ensuring the proper conduct of the Election, including, but not limited to, distributing, handling, and counting of ballots and the survey of returns, taking the necessary steps to protect the confidentiality of the ballots cast and the integrity of the Election, appointing election judges as necessary, appointing the board of canvassers, arranging for the required notices of the Election and printing of ballots, maintaining a permanent absentee voter list, and directing that all other appropriate actions be accomplished.

3. The Board hereby directs the Designated Election Official to provide notice by publication of a call for nominations for the Election in accordance with the requirements of Section 1-13.5-501, C.R.S., which shall include information regarding the director offices to be voted upon at the Election, where a self-nomination and acceptance form or letter may be obtained, the deadline for submitting the self-nomination and acceptance form or letter to the Designated Election Official, and information on obtaining an absentee ballot. The notice shall be published one time in *The*

Sentinel which is a newspaper of a general circulation in the District, between seventy-five (75) and one hundred (100) days before the Election. The notice shall also be made by

(1) mailing the notice, at the lowest cost option, to each address at which one or more active registered electors of the District resides as specified in the registration list provided by the county clerk and recorder as of the date that is one hundred fifty (150) days prior to the date of the Election;

(2) including the notice as a prominent part of a newsletter, annual report, billing insert, billing statement, letter, voter information card, or other notice of election, or other informational mailing sent by the District to the eligible electors of the District;

(3) **posting the information on the official website of the District;** or

(4) posting the notice in at least three public places within the territorial boundaries of the District and, in addition, posting a notice in the office of the Clerk and Recorder of _____ County, as is permitted because the District has fewer than one thousand eligible electors and is wholly located within _____ County, the population of which is less than thirty thousand people.

4. The Board deems it expedient for the convenience of the electors that it shall establish a polling place & drop-off location for all regular and special elections of the District. There shall be one (1) polling place & drop-off location for the elections. This polling place & drop-off location shall be used for any regular or special elections to be held in 2025 and in each year thereafter until such polling place & drop-off location is changed by duly adopted resolution of the Board. Such polling place & drop-off location shall be located at Heather Gardens Clubhouse, 2888 S. Heather Gardens Way, Aurora, Colorado 80014. All voters for the District, including handicapped and nonresident voters unless otherwise permitted by law, shall return their ballots to the designated polling place & drop-off location by mail or delivery. All eligible electors may also obtain a replacement ballot from the polling place & drop-off location until 7:00 P.M. on election day in accordance with Section 1-13.5-1105(4), C.R.S. A map showing the District's boundaries is on file at the Heather Gardens Clubhouse, 2888 S. Heather Gardens Way, Aurora, Colorado 80014 and is available for examination by all interested persons.

5. Applications for an absentee voter's ballot or for permanent absentee voter status may be filed with the Designated Election Official, 405 Urban Street, Suite 310, Lakewood, Colorado 80228, between the hours of 8:00 a.m. and 5:00 p.m., until the close of business on the Tuesday immediately preceding the Election (April 29, 2025).

6. Pursuant to Section 1-13.5-303, C.R.S., all candidates must file a self-nomination and acceptance form or letter signed by the candidate and by an eligible elector of the District as a witness to the signature of the candidate with the Designated Election Official no later than 5:00 P.M. on the day that is sixty-seven (67) days prior to the Election (February 28, 2025). Self-nomination and acceptance forms are available at the Designated Election Official's office located at the above address.

7. Pursuant to Section 1-13.5-513, C.R.S., the Board hereby authorizes and directs the Designated Election Official to cancel the Election and declare the candidates elected if, at or after the close of business on the sixty-third (63rd) day before the Election (March 4, 2025), there are not more candidates for director than offices to be filled, including candidates filing affidavits of intent

to be write-in candidates, and so long as the only matter before the electors is the election of persons to office. Under these circumstances, the Board further authorizes and directs the Designated Election Official to provide notice of the cancellation by publication in accordance with Section 1-13.5-501, C.R.S. and to post notice of the cancellation at each polling location, the office of the Designated Election Official, the Arapahoe County Clerk and Recorder's Office, and with the Division. The Designated Election Official shall also file notice and a copy of this Resolution authorizing the cancellation of the Election with the Division pursuant to Section 1-11-103(3), C.R.S. The Designated Election Official shall also notify the candidates that the Election was canceled and they were elected by acclamation.

8. In accordance with Sections 1-11-103(3) & 32-1-104(1), C.R.S., the District directs the Designated Election Official to notify the Division of the results of any elections held by the District, including the District's business address, telephone number, and contact person within thirty (30) days after the Election (June 5, 2025).

9. The Designated Election Official and the officers, agents, consultants, and employees, if any, of the District are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Resolution.

10. All actions not inconsistent with the provisions of this Resolution heretofore taken by the members of the Board, the Designated Election Official, and the officers, agents, consultants, and employees, if any, of the District, and directed toward holding the Election for the purposes stated herein are hereby ratified, approved, and confirmed.

11. All prior acts, orders, or resolutions, or parts thereof, by the District in conflict with this Resolution are hereby repealed, except that this repealer shall not be construed to revive any act, order, or resolution, or part thereof, heretofore repealed.

12. If any section, paragraph, clause, or provision of this Resolution shall be adjudged to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining sections, paragraphs, clauses or provisions of this Resolution, it being the intention that the various parts hereof are severable.

13. The District shall be responsible for the payment of any and all costs associated with the conduct of the Election, including its cancellation, if necessary, and those costs incurred pursuant to the terms and conditions of an election agreement with the County, if any.

14. This Resolution shall take effect on the date and at the time of its adoption.

[Remainder of page intentionally left blank.]

Whereupon, a motion was made and seconded, and upon a majority vote, this Resolution was approved by the Board.

ADOPTED AND APPROVED THIS 16TH DAY OF JANUARY, 2025.

**HEATHER GARDENS METROPOLITAN
DISTRICT**

William Gold, President

ATTEST:

Forrest McClure, Secretary



1900 16th Street
Suite 1700
Denver, CO 80202

T: 303.698.1883
E: info@rubinbrown.com
www.RubinBrown.com

CERTIFIED PUBLIC ACCOUNTANTS & BUSINESS CONSULTANTS

December 9, 2024

Board Members
c/o Mr. Lary Herkal, CEO
Heather Gardens Metropolitan District
2888 S Heather Gardens Way
Aurora, Colorado 80014

Dear Members of the Board,

We appreciate the opportunity to be of service to Heather Gardens Metropolitan District. This letter ("Letter") sets forth the services that RubinBrown LLP ("RubinBrown") will provide for you. In order to better understand each party's obligations, the terms "we," "us," and "our" refer to RubinBrown and the terms "you," "your" and "management" refer to Heather Gardens Metropolitan District. Your engagement of RubinBrown will be governed by the terms of this Letter and the attached RubinBrown LLP Engagement Terms.

Scope of Services

We are pleased to confirm our understanding of the services we are to provide Heather Gardens Metropolitan District for the year ended December 31, 2023. We will audit the financial statements of the business-type activities and the aggregate remaining fund information, including the related notes to the financial statements which collectively comprise the basic financial statements of Heather Gardens Metropolitan District as of and for the year ended December 31, 2023. Accounting standards generally accepted in the United States of America (GAAP) provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement Heather Gardens Metropolitan District's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to Heather Gardens Metropolitan District's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

- Management's Discussion and Analysis

We have also been engaged to report on supplementary information other than RSI that accompanies Heather Gardens Metropolitan District's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America and will provide an opinion on it in relation to the financial statements as a whole:

- Proprietary Fund Schedule of Revenues, Expenditures and Changes in Funds Available – Budget and Actual
- Note to Budgetary Comparison Schedule

Audit Objective

The objectives of our audit are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and issue an auditors' report that includes our opinions as to whether your basic financial statements are fairly presented, in all material respects, in conformity with accounting principles generally accepted in the United States of America and to report on the fairness of the supplementary information referred to above when considered in relation to the financial statements as a whole. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with auditing standards generally accepted in the United States of America (GAAS) will always detect a material misstatement when it exists. Misstatements, including omissions, can arise from fraud or error and are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment of a reasonable user made based on the financial statements.

Our audit will be conducted in accordance with GAAS and will include tests of the accounting records and other procedures we consider necessary to enable us to express such opinions. We will issue a written report upon completion of our audit of your financial statements. Our report will be addressed to those responsible for governance of Heather Gardens Metropolitan District. Circumstances may arise in which our report may differ from its expected form and content based on the results of our audit. Depending on the nature of these circumstances, it may be necessary for us to modify our opinions, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement.

Audit Procedures - General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements and determining whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation. As part of an audit in accordance with GAAS, we exercise professional judgment and maintain professional skepticism throughout the audit. GAAS requires that we plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity. Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is an unavoidable risk that material misstatements exist and will not be detected by us, even though the audit is properly planned and performed in accordance with

GAAS. In addition, an audit is not designed to detect immaterial misstatements, or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform the appropriate level of management of any material errors, fraudulent financial reporting, or misappropriation of assets that comes to our attention. We will also inform the appropriate level of management of any violations of laws or government regulations that come to our attention, unless clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts and may include tests of the physical existence of inventories (if applicable), and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

We will also conclude, based on the audit evidence obtained, whether there are conditions or events, considered in the aggregate, that raise substantial doubt about your ability to continue as a going concern for a reasonable period of time.

Russell White will serve as the partner responsible for the overall supervision of the audit engagement and for authorizing the Firm's signature on the audit report letter.

Audit Procedures - Internal Control

We will obtain an understanding of the entity and its environment, including internal control relevant to the audit, sufficient to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and to design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. An audit is not designed to provide assurance on internal control or to identify deficiencies in internal control. Accordingly, we will express no such opinion. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards.

Audit Procedures - Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of Heather Gardens Metropolitan District's compliance with the provisions of applicable laws, regulations, contracts, and agreements. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion.

Management Responsibilities

Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein. You are responsible for making all management decisions and performing all management functions relating to the financial statements and related notes and for accepting full responsibility for such decisions. If you have requested our assistance with the preparation of the financial statements and related notes, you will be required to acknowledge in a written representation letter our assistance with such preparation and that you have reviewed and approved the financial statements and related notes prior to their issuance and have accepted responsibility for them. Further, you are required to designate an individual with suitable skill, knowledge, or experience to oversee our assistance with the preparation of your financial statements and related notes (if

applicable) and any other nonattest services we provide; and for evaluating the adequacy and results of those services and accepting responsibility for them.

Management is responsible for establishing and maintaining effective internal controls, including monitoring ongoing activities; for the selection and application of accounting principles; and for the fair presentation in the financial statements of the respective financial position of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the Heather Gardens Metropolitan District and the respective changes in financial position and where applicable, cash flows, in conformity with U.S. generally accepted accounting principles.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements (whether obtained from within or outside of the general and subsidiary ledgers) such as financial records, documentation, and identification of all related parties and all related-party relationships and transactions, (2) additional information that we may request for the purpose of the audit, and (3) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence.

We are not responsible for electronically hosting, storing or maintaining any of your original financial or non-financial information (or sole copies). You are expected to retain all financial and non-financial information including, but not limited to, anything you upload to a portal and are responsible for downloading and retaining anything we upload to a portal or transmit to you in a different manner. Portals are only meant as a method of transferring data and are not intended for the storage of your information.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud or illegal acts affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud or illegal acts could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, regulators, or others. In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws and regulations.

Those charged with governance and management are solely responsible for (i) the preparation and fair presentation of the Financial Statements including the related footnotes (ii) selecting and applying sound accounting principles, (iii) designing, implementing, and maintaining adequate internal controls relevant to the preparation and fair presentation of Financial Statements that are free from material misstatement, whether due to fraud or error, including monitoring ongoing activities, (iv) preventing and detecting fraud, (v) adjusting the Financial Statements to correct material misstatements, and (vi) affirming to RubinBrown in a written representation letter that the effects of any uncorrected misstatements aggregated by RubinBrown during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the Financial Statements taken as a whole. You are responsible for the preparation of the supplementary information in conformity with accounting principles generally accepted in the United States of America. You agree to include our report on the supplementary information in any document that contains, and indicates that we have reported on, the supplementary information. You also agree to include the audited Financial Statements with any presentation of the supplementary information that includes our report thereon. If the supplementary information is issued separately from the audited Financial Statements that contain our report on supplementary information, you agree to make those audited Financial Statements readily available to users of the supplementary

information no later than the date the supplementary information is issued with our report thereon.

As a condition of our engagement, management agrees to sign a written representation letter attesting to the completeness and truthfulness of representations and disclosures made to us during the course of our work, and you acknowledge and understand your responsibility to include required representations regarding supplementary information in the written representation letter.

With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on your website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

We understand that your employees will prepare all cash or other confirmations we request and will locate any documents selected by us for testing.

Engagement Administration, Timing and Fee

Our fee for the Attest Services will be \$36,000 plus out-of-pocket expenses, technology and administrative fees. The fees are based upon anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the engagement. **Unexpected circumstances include: account balances not reconciled, trial balances that do not balance, accounting department turnover, and heavy accounting assistance to complete the audit.** If significant additional fees are necessary, we will discuss them with you and agree to a new fee estimate before additional fees are incurred. We will keep you informed of our progress and work closely with you to structure our work to ensure that it is completed in a cost-effective manner.

Engagement Terms

Attached is an additional statement of terms regarding our engagement titled, RubinBrown LLP Engagement Terms (hereinafter "RubinBrown Engagement Terms"). The RubinBrown Engagement Terms are hereby incorporated by reference and the contents of this Letter should be construed in accordance with the terms set forth therein, unless expressly stated otherwise in this Letter. When construing or interpreting the contents of this Letter or the terms of our engagement, the RubinBrown Engagement Terms will govern. To the extent any apparent or actual contradiction may exist, the RubinBrown Engagement Terms will be deemed controlling and will supersede any such statement contained herein, unless expressly stated otherwise in the provision or portion of this Letter at issue.

Conclusion

We appreciate the opportunity to be of service to you. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this Letter and the RubinBrown Engagement Terms, please sign the enclosed copy and return it to us. By signing the enclosed copy of this Letter, you acknowledge that you have read, understood and agreed to the terms as set forth in this Letter and in the RubinBrown Engagement Terms.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

Sincerely,

RubinBrown LLP



Russell White
Partner

Direct Dial Number:303-952-1247

Email: russell.white@rubinbrown.com

Attachment(s):

Exhibit A - RubinBrown LLP Engagement Terms

By signing below, the signatory further represents and warrants that she/he is authorized to approve the terms of this engagement on behalf of Heather Gardens Metropolitan District.

Approved By: _____

Date: _____

Board Member

**PLEASE SIGN
& DATE**

EXHIBIT A - RUBINBROWN LLP ENGAGEMENT TERMS

These Engagement Terms (the "Terms") and the engagement letter (the "Letter") incorporating the Terms (the Terms and Letter are hereinafter collectively referred to as the "Agreement"), entered into by and between RubinBrown LLP ("RubinBrown") and Client, set forth the terms and conditions of RubinBrown's engagement with Client (the "Engagement"). These Terms shall also apply to any additional work that Client requests RubinBrown to perform unless a separate engagement letter is entered into by and between RubinBrown and Client for such additional work.

1. **Agreed Upon Scope of Work/Services.** RubinBrown shall be obligated only for the work product and deliverables specified in the Letter (the "Services"), and only for changes in such scope that are set forth in writing and duly executed by the parties hereto. Unless expressly provided for in the Letter, RubinBrown's Services do not include giving testimony, appearing or participating in any discovery proceedings, administrative hearings, court, or other legal or regulatory inquiries or proceedings and, in the event RubinBrown later agrees to perform such additional services, RubinBrown will charge and Client shall pay RubinBrown's customary fee for such services pursuant to RubinBrown's billing terms as outlined in Paragraph 3 herein.

2. **Period Covered/Term and Termination.** This engagement letter covers the period beginning on the date the described Services begin (the "Effective Date") and ending on the date all such Services have been completed unless earlier terminated pursuant to these Terms. Either party may terminate this Agreement, for any reason, without penalty, on thirty (30) days' written notice to the other party or may terminate immediately for material breach of the other party on written notice to the other party. RubinBrown may also immediately terminate this Agreement or any separate engagement letter in whole or in part or decline to perform certain tasks if information comes to RubinBrown's attention indicating that performing such tasks could cause RubinBrown to be in violation of any applicable law, regulations or standards, to be in a conflict of interest or to suffer reputational damage.

3. **Billing Terms.** Invoices will be rendered monthly and presented to you for Services performed in the prior month and are due and payable within thirty (30) days of the date of the billing statement. We reserve the right to suspend or terminate further Services until payment is received on all invoices that are not paid in full within thirty (30) days of the date of the billing statement. In the event that we suspend or terminate this Engagement as a result of non-payment, you agree that we will not be responsible for your failure to meet government or other filing deadlines, or for penalties, losses, damages of any nature, or interest that may be assessed against you resulting from your failure to meet said deadlines. A one and a half percent (1½%) per month service charge will be added to balances remaining unpaid sixty (60) days or more after the invoice date. Client agrees that in the event Client fails to make any payment when due hereunder, RubinBrown may immediately terminate this Agreement or any separate engagement letter or statement of work and/or withhold delivery of any complete or incomplete Services. RubinBrown shall be entitled to recover all costs including reasonable attorney's fees incurred in furtherance of collecting such past due payments whether or not arbitration is filed.

4. **Client's Cooperation, Participation, Representations and Warranties.** While RubinBrown may from time to time suggest various options that may be available to Client and further give its professional evaluation of each of these options, Client must make the ultimate decision as to which, if any, of these options to implement. Client shall be solely responsible for applying independent business judgment with respect to RubinBrown's Services (including decisions regarding implementation or other further course(s) of action) and shall be solely and exclusively responsible for such decisions. Client warrants that RubinBrown shall be entitled to rely on all decisions and approvals of Client (and its counsel). Except as specifically provided in the Letter, Client further represents and warrants that RubinBrown shall be entitled to rely on the accuracy and completeness of all information provided by Client and that Client has maintained all books and records provided to

RubinBrown in good order. Client agrees that RubinBrown has no duty to verify the accuracy or completeness of information provided by Client.

5. Access to Resources and Information. Unless specified herein as the responsibility of RubinBrown to provide, Client shall obtain for RubinBrown, on a timely basis, any internal and third-party permissions, licenses or approvals that are required for RubinBrown to perform the Services contemplated hereunder (including the use of any necessary software or data). Client shall also provide RubinBrown with such information, signoffs and assistance as may be necessary for RubinBrown to perform the Engagement or as RubinBrown may reasonably request. Delays by Client in providing RubinBrown with requested information or in providing inconsistent, disorganized, or missing information may result in additional fees.

6. Record Retention. Pursuant to RubinBrown's record retention policy, at the conclusion of this Engagement, RubinBrown may retain copies of the records supplied to RubinBrown by Client and RubinBrown will return all such original records to the Client. Copies of the Client's records and any subsequent files created by RubinBrown (collectively "Work Papers") are RubinBrown's property and are not a substitute for the Client's own records. Client shall be responsible for retaining and maintaining records of its operations and records required to backup and support the Client's financial reports and tax returns. RubinBrown will destroy all pertinent Work Papers after a retention period of seven (7) years, after which time these items will no longer be available ("Record Retention Period"). RubinBrown shall not be obligated to destroy any Confidential Information created electronically pursuant to automatic or ordinary course archiving, back-up, security or disaster recovery systems or procedures. Catastrophic events or physical deterioration may result in RubinBrown's records being unavailable. RubinBrown's email retention policy is eighteen (18) months, after which time emails will no longer be available ("Email Retention Period").

7. Confidentiality. RubinBrown shall maintain the confidentiality of Client information, which is of a confidential nature ("Confidential Information"), using the same degree of care it uses in maintaining its own confidential information, but no less than reasonable care. Confidential Information means all Client information or material of Client, whether revealed orally, visually, or in tangible or electronic form, that is competitively sensitive material not generally known to the public that relates to the business of Client, or any of their respective interest holders, unless such information (i) was already rightfully known to RubinBrown at the time of disclosure by disclosing Party; (ii) is in or has entered the public domain through no breach of this Agreement or other wrongful act of RubinBrown; (iii) has been rightfully received by RubinBrown from a third party not under obligation of confidentiality to Client and without breach of this Agreement; or (iv) is independently developed by RubinBrown without reference or reliance on any confidential information of Client. Nothing herein shall preclude RubinBrown from disclosing Confidential Information to RubinBrown's attorneys, advisors, insurers, experts, or agents who agree to maintain the confidentiality of such information, with or without notice to Client. If any Confidential Information is sought by a validly issued subpoena or otherwise required by law, then the provisions of Paragraph 9 herein shall apply.

In the course of providing professional Services to Client in connection with this engagement, RubinBrown may require the assistance of third party professional service providers with specialized capabilities or expertise. RubinBrown uses commercially reasonable means to confirm that third party professional service providers utilize commercially reasonable means to protect confidential information and Client hereby consents to the use of third-party vendors.

Except as otherwise specifically provided herein or as required by law, including any applicable open records law, Client shall at no time disclose any of RubinBrown's Services, fees, and other confidential material, including but not limited to internally developed financial models, or RubinBrown's role in the Engagement, to any third party (except to a government agency, to the extent such filing is an agreed objective of the Agreement, or as otherwise legally compelled) without RubinBrown's prior written consent through a release letter or

equivalent in each case. Client's use of RubinBrown's Services hereunder (except for copies of filed tax returns) shall in any event be restricted to the stated purpose, if any, in the Letter and otherwise to Client's internal business use only. Client and RubinBrown each retains the right in any event to use the ideas, concepts, techniques, industry data and know-how used or developed in the course of the Engagement.

Notwithstanding anything herein to the contrary, (i) no term of the Agreement is intended to be, and shall not be construed to be, a condition of confidentiality as such term is used in Sections 6011, 6111 and 6112 of the Internal Revenue Code of 1986, as amended ("IRC"), the regulations thereunder and/or Section 10.35 of Treasury Department Circular 230 ("Circular 230"), (ii) Client is hereby authorized to disclose to any and all persons, without any limitation of any kind, any aspect of any entity, plan, arrangement or transaction RubinBrown introduces, addresses or recommends, or with respect to which RubinBrown provides advice, consultation or Services pursuant to the Agreement, it being Client's duty to ascertain whether any additional authorization from any other person or entity is necessary or desirable, and (iii) there is no limitation imposed herein on any person or entity on disclosure of the tax treatment, tax structure or tax strategy of any transaction that is the subject of written advice (as defined in Circular 230) provided by RubinBrown pursuant to the Agreement.

RubinBrown is required to comply with certain peer review requirements in order to maintain its professional licensing. In complying with these peer review requirements certain confidential information may be disclosed to the reviewer. These peer reviews are only conducted by other qualified professionals who are subject to maintaining the confidentiality of information disclosed in the course of the review. Client consents to these confidential disclosures by RubinBrown and acknowledges they are not a violation of RubinBrown's obligation to maintain the confidentiality of information.

8. Electronic Communications. Except as instructed otherwise in writing, each party may assume that the other approves of electronic communications through encrypted or unencrypted wired or wireless email, cellular phones, voice over internet, electronic data/document web sites, portals, and/or other technology and voicemail communication of both confidential or sensitive and non-confidential or sensitive documents and other communications concerning the Engagement, as well as other means of communication used or accepted by the other. RubinBrown uses third party cloud-based services to process, transmit, store and access confidential and non-confidential client information regarding the representation of its clients. Accordingly, information regarding you and RubinBrown's Services may be transmitted to and from a third party cloud-based service providers in connection with this Agreement and Client hereby consents to RubinBrown's use of such third-party service providers.

9. Subpoenas/Legal Orders for Client's Records and Information. At any time during or after our Engagement, should RubinBrown receive a subpoena or other legal order from a Third Party seeking production of Client's records, documents, or Confidential Information, or testimony relating to RubinBrown's Engagement, RubinBrown will, to the extent permitted by law, notify Client as soon as practicable using the last contact information for Client known to RubinBrown. Upon such notification, should Client wish to take action to protect its records and/or its information from production in compliance with the subpoena, Client agrees to notify RubinBrown of Client's intent to take action to protect its records and/or its information from production within 3 business days after such notice or within 48 hours before the response is due, whichever is shorter and it shall be Client's obligation to take such action in compliance with applicable law, at Client's expense, using counsel of Client's choice. Irrespective of Client's decision regarding what action, if any, it intends to take to protect its records and information, RubinBrown shall have the right to engage its own counsel to assist and advise RubinBrown in coordinating with Client and/or Client's counsel in this regard, and/or in responding to the subpoena. If Client does not provide RubinBrown with notice of its intent to take action to protect its records and/or information, Client is deemed to not be asserting and/or to be waiving any accountant-client privilege and Client

agrees that RubinBrown has the right to produce any and all records RubinBrown deems appropriate in compliance with the subpoena and law. Client shall reimburse RubinBrown, upon receipt of an appropriate invoice, for all of RubinBrown's internal and external costs and expenses in responding to any subpoena for Client's records, and/or providing testimony pursuant to such subpoena, including RubinBrown's reasonable and customary fees for such services, as well as its internal costs (employee time and expenses), external costs (copy services or other vendors), and reasonable attorneys' fees. For the avoidance of doubt, this provision survives any termination or expiration of this Agreement.

10. Taxpayer Confidentiality Privileges: Use of Counsel. The parties acknowledge that certain documents and other communications involving and/or disclosed to or by RubinBrown may be subject to one or more claims of privilege by or on behalf of Client (e.g., the attorney-client privilege, the accountant-client privilege, the IRC Section 7525 tax advisory privilege, etc.). Although Client is solely responsible for managing the recognition, establishment and maintenance (e.g., possible waiver) of these possible protections (and for involving legal counsel as it deems necessary), RubinBrown shall cooperate with Client's reasonable written instructions regarding such privileges.

11. Management Dishonesty. While RubinBrown will advise Client if RubinBrown discovers errors or irregularities, Client understands and agrees that Client cannot rely on RubinBrown to detect employee or management dishonesty, including, without limitation, fraud or embezzlement, unless specifically set forth in the Letter.

12. External Factors; Standards of Performance. Client acknowledges that the Engagement will involve analysis, judgment and other performance from time to time in a context where the participation of Client or others is necessary, where answers are often uncertain or unverifiable in advance and where facts and available information change with time. Accordingly, evaluation of RubinBrown's performance of its obligations shall be based solely on its substantial conformance with any standards or specifications expressly set forth in the Agreement and all applicable professional standards, any such nonconformance (and applicability) to be clearly and convincingly shown. If there are any changes in the relevant laws, regulations, industry, market conditions or other circumstances, including in the Client's own business practices, RubinBrown has no responsibility to advise Client of any such changes and Client acknowledges the need for it to re-evaluate RubinBrown's preceding Services.

13. Conflicts of Interest; Non-Exclusivity. Client acknowledges that RubinBrown is currently providing or may in the future provide services of the same or similar nature to other parties and the Client agrees that RubinBrown are not prevented or barred from rendering services of the same nature or a similar nature to any other individual or entity except as prevented by law or professional standards.

14. Affiliates. If the Letter provides that RubinBrown's Services may pertain not only to Client but also to a parent, subsidiaries, affiliates, advisors, contractors, family members, related trusts, partnerships, partners, estates or foundations, such Affiliates shall be bound by the terms of the Agreement. Client shall, as may be requested by RubinBrown from time to time (including subsequent to completion of the Engagement), obtain written confirmation of their agreement to the terms of the Agreement.

15. Limitation of Liability. The liability of RubinBrown (including its partners, employees, agents and affiliated companies) to Client (and any purported third-party beneficiaries, including Affiliates) for any claim or damages (including but not limited to incidental, special, exemplary, punitive, economic, or consequential), whether in contract, strict liability, tort (including but not limited to RubinBrown's negligence or fault, except that this provision does not purport to limit liability for RubinBrown's intentional/willful torts or for any other liabilities for which a limitation of liability is prohibited by Colorado law), or otherwise, arising out of, connected with, or resulting from RubinBrown's Services or the Engagement generally, shall not exceed all fees related to the Engagement giving rise to such claim paid by Client to

RubinBrown, even if RubinBrown has been advised of the possibility of such claims or damages.

16. Baker Tilly International. RubinBrown is an independent member of Baker Tilly International. Baker Tilly International Limited is an English Company. Baker Tilly International provides no professional services to clients. Each of the member firm is a separate and independent legal entity and each describes itself as such. RubinBrown is not Baker Tilly International's agent and does not have authority to bind Baker Tilly International or act on Baker Tilly International's behalf. None of Baker Tilly International, RubinBrown or any of the other independent member firms of Baker Tilly International has any liability for each other's acts or omissions. In addition, neither Baker Tilly International nor any other member has a right to exercise management control over any other member firm. RubinBrown shall in no event be held liable for any work or conduct (whether negligent, intentional, fraudulent, or otherwise) done by Baker Tilly International or any other member firm or any partner, officer, manager, personnel, affiliates, employees, or agent thereof. The name Baker Tilly and its associated logo is used under license from Baker Tilly International Limited.

17. Indemnification. Client agrees to release, indemnify, and hold RubinBrown, its partners, officers, managers, personnel, agents, employees, affiliated companies, successors and assigns harmless upon demand from any liability and costs, including attorneys' fees, resulting from any knowing misrepresentations of management or any intentional or negligent act or omission by Client. Client's obligation to indemnify shall survive until such time as all claims against RubinBrown are legally barred under all applicable statutes of limitation.

18. Independent Contractor Status. Each party is an independent contractor with respect to the other and shall not be construed as having an employment, partnership, trustee or fiduciary relationship.

19. Assignments and Successors. Neither party may assign any of its rights or benefits under the Agreement without the prior written consent of the other party. Subject to the preceding sentence, the Agreement will apply to, be binding in all respects upon, and inure to the benefit of the permitted successors, assigns, heirs, estates, and legal representatives of the parties. Notwithstanding the foregoing, RubinBrown may authorize and allow its affiliates and contractors to assist in performing the Engagement and to share in RubinBrown's rights hereunder, provided any such party shall commit (as applicable) to be bound by the restrictions set forth in the Agreement.

20. No Third-Party Rights. Unless specifically set forth in the Letter or herein, nothing expressed or referred to in the Agreement will be construed to give any person, other than the parties to the Agreement, any legal or equitable right, remedy, claim, benefit, priority or interest under or with respect to the Agreement or any provision of the Agreement. Except as specifically provided in the Letter, the Agreement and any Services hereunder are for the sole and exclusive benefit of the Client and its permitted successors and assigns, and neither Client nor RubinBrown intends for RubinBrown's Services or work product to be relied upon, to be used by, or to provide any benefit or guidance to any other persons.

21. Mediation. If Client (including any purported third-party beneficiaries, including Affiliates) is dissatisfied with the quality or timeliness of RubinBrown's Services, or believes such Services were in any way negligently performed, Client agrees to promptly notify RubinBrown in writing of its dissatisfaction and specifically set forth its complaints. If the parties are unable to resolve their differences within thirty (30) days after RubinBrown's receipt of Client's written notice, it is agreed that either party may invoke the services of an impartial mediator under the auspices of the commercial mediation rules of the American Arbitration Association, United States Arbitration and Mediation Service, or any other national neutral mediation service, at the election of the party who first requests mediation. It is agreed that no claim pertaining to the quality or timeliness and/or alleged negligence of RubinBrown's

provided Services shall be arbitrated unless the foregoing procedures have first been followed and the mediator fails to settle the claim within thirty (30) days after the mediation process has concluded.

22. BINDING ARBITRATION. ANY AND ALL DISPUTES IN ANY WAY CONCERNING, ARISING OUT OF OR RELATED TO THE SERVICES PROVIDED BY RUBINBROWN PURSUANT TO THE AGREEMENT (INCLUDING SERVICES PERFORMED UNDER ANY PRIOR AGREEMENT) OR THE BUSINESS RELATIONSHIP ARISING OUT OF THE ENGAGEMENT OR ANY PRIOR ENGAGEMENT SHALL BE COMMITTED TO BINDING ARBITRATION BEFORE THE AMERICAN ARBITRATION ASSOCIATION ("AAA"), INCLUDING ANY DISPUTES INVOLVING PARTIES WHO ARE AFFILIATES OF CLIENT OR WHO ARE ALLEGED THIRD-PARTY BENEFICIARIES TO THIS AGREEMENT. THE ARBITRATOR, AND NOT ANY FEDERAL, STATE, OR LOCAL COURT OR AGENCY, SHALL HAVE EXCLUSIVE JURISDICTION TO RESOLVE ANY DISPUTES INVOLVING RUBINBROWN, AND IT IS THE INTENT OF THIS AGREEMENT THAT THIS GRANT OF JURISDICTION BE THE BROADEST ALLOWED BY LAW, AND THAT ANY DISPUTES REGARDING THE SCOPE OF THE ARBITRATOR'S JURISDICTION BE BOTH DECIDED BY THE ARBITRATOR AND RESOLVED IN FAVOR OF ARBITRATION, EXCEPT WHERE EXPRESSLY PROHIBITED BY APPLICABLE LAW. WITHOUT LIMITING THE FOREGOING, THE ARBITRATOR SHALL HAVE EXCLUSIVE JURISDICTION TO RESOLVE ANY DISPUTE RELATING TO THE INTERPRETATION, APPLICABILITY, ENFORCEABILITY OR FORMATION OF THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO ANY CLAIM THAT ALL OR ANY PART OF THIS AGREEMENT WAS NOT AGREED TO, IS INVALID, OR IS VOID OR VOIDABLE. SUCH ARBITRATION SHALL BE CONDUCTED IN ACCORDANCE WITH THE AAA'S COMMERCIAL ARBITRATION RULES THEN IN EFFECT, AS MODIFIED BY THE PROVISIONS STATED HEREIN. THE LOCATION OF THE ARBITRATION SHALL BE IN THE DENVER METROPOLITAN AREA. THE PARTIES SHALL SELECT ONE ARBITRATOR, UNLESS THE AMOUNT OF ANY DEMAND OR COUNTERCLAIM IN THE ARBITRATION SHALL BE \$750,000 OR MORE, IN WHICH CASE THE PARTIES SHALL SELECT THREE ARBITRATORS. THE PARTIES SHALL HAVE THE RIGHT TO CONDUCT DISCOVERY IN THE ARBITRATION CONSISTENT WITH THAT DISCOVERY PERMITTED BY THE FEDERAL RULES OF CIVIL PROCEDURE, WITH THE ARBITRATOR(S) TO DECIDE ANY DISCOVERY DISPUTES. ALL PROCEEDINGS CONDUCTED IN THE ARBITRATION, INCLUDING ANY DISCOVERY AND ANY ORDER ENTERED BY THE ARBITRATOR(S), SHALL BE STRICTLY CONFIDENTIAL. THE AWARD OF THE ARBITRATOR(S) SHALL BE FINAL, AND MAY BE CONFIRMED BY THE PARTIES IN THE DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO, OR IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO. THE PARTIES AGREE THAT ANY DISPUTE RESOLUTION PROCEEDINGS WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. THE PARTIES EACH HEREBY WAIVE THE RIGHT TO PARTICIPATE IN ANY CLASS ACTION, REPRESENTATIVE ACTION, OR CONSOLIDATED ACTION, WHETHER IN COURT OR ARBITRATION.

23. Covenant Not to Hire or Solicit Employees. Client agrees that during the term of this Agreement, and for a period of one (1) year following the termination or expiration of this Agreement, Client shall not, directly or indirectly, hire, retain or engage, or offer to hire, retain or engage, or solicit for employment or other retention or engagement of services, or otherwise induce to leave RubinBrown, for the benefit of Client, any employee, consultant or contractor who is employed by, engaged by, or contracted with RubinBrown. Upon breach of this section, Client agrees to pay, upon demand, as liquidated damages, and not as a penalty, to RubinBrown, an amount equal to the annualized total gross compensation, as at the time of the breach, of the applicable RubinBrown employee, consultant, or contractor. This provision shall be without prejudice to RubinBrown's right to seek injunctive relief or other legal remedies. Notwithstanding the forgoing, this covenant shall not be applicable to hiring, offering to hire, or otherwise engaging pursuant to a response to a general advertisement by Client.

24. Governing Law. The Agreement will be deemed to be made, negotiated, and accepted in Colorado, governed by, and construed in accordance with the laws of the State of Colorado or, if applicable, by controlling federal law under the precedent of the United States Court of Appeals for the Tenth Circuit, without giving effect to conflicts of laws rules irrespective of place of domicile or residence of either party and without reference to conflicts of law principles.

25. Attorneys' Fees and Costs. In connection with any legal action, arbitration or litigation arising from or in connection with the Agreement or its subject matter, the prevailing party shall be entitled to recover, subject to the damage limitations set forth in the Agreement, all costs incurred by such party in furtherance of such legal action, arbitration or litigation, including reasonable attorney's fees.

26. Construction. To the extent any apparent or actual contradiction may exist when construing or interpreting the contents of the Letter and the Terms, the Terms shall control and supersede any statement contained in the Letter, unless expressly stated otherwise in the provision or portion of the Letter or Terms at issue.

27. Waivers. Neither the failure nor any delay by any party in exercising any right, power or privilege under the Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

28. Force Majeure. Neither party shall be held responsible for delay or default caused by fire, riot, terrorism, plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions; acts of God or war if the event is beyond the party's reasonable control and the affected party gives written notice to the other party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default; however, no Force Majeure event shall excuse Client of any obligation to pay any outstanding invoice or fee or from any indemnification obligation under this Agreement.

29. Entire Agreement and Modification. The Agreement supersedes all prior agreements, arrangements and communications between the parties with respect to its subject matter and constitutes a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. The Agreement may not be modified or amended except by the mutual written agreement of both parties.

30. Severability. If any arbitrator or court of competent jurisdiction holds any provision of the Agreement invalid or unenforceable, the other provisions of the Agreement will remain in full force and effect. Any provision of the Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

31. Headings; Counterparts; Electronic Signatures. The headings of paragraphs contained in the Agreement are provided for convenience only. They form no part of the Agreement and shall not affect its construction or interpretation. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument. Client hereby consents to the use of electronic signatures for this Agreement and all RubinBrown related Services and agrees that any electronic signature or signature delivered via facsimile or other electronic means shall be deemed to be of the same force and effect as a handwritten signature.